

2003

Legislative Watch

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LEGISLATIVE WATCH

Legislative Watch reports on U.S. legislation relevant to human rights and humanitarian law. This list is not meant to be comprehensive.

The Human Rights Information Act, H.R. 1152

Major Sponsor: Rep. Tom Lantos (D-CA)
Status: Forwarded to the House Committee on Government Reform as amended by the Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations on September 17, 2002.

Substance: This legislation aims to promote human rights, democracy, and the rule of law by providing a process for U.S. agencies to expedite declassification and disclosure of documents relating to systematic human rights abuses in countries other than the United States. Upon receipt of a bona fide request from an individual or entity carrying out an official mandate to investigate a pattern of gross violations of internationally recognized human rights, federal executive agencies involved in foreign policy or foreign intelligence, such as the U.S. Department of State, the U.S. Department of Defense, and the Central Intelligence Agency, must identify, review, and organize requested human rights records for declassification and public disclosure in order to assist in such investigations. The Act also prescribes guidelines for postponing disclosure of human rights records on specified grounds, such as a threat to the military defense of the United States that outweighs the public interest in revealing the records. Additionally, the Act specifically requires agencies to identify, review, and organize all human rights records regarding activities in Guatemala and Honduras for declassification and public disclosure.

Expressing the Sense of the Congress regarding So-Called "Honor Killings," H. Con. Res. 496

Major Sponsor: Rep. Jerrold Nadler (D-NY)

Status: Referred to the House Committee on International Relations on October 2, 2002.

This resolution expresses the sense of Congress that the United States should work to put an end to so-called "honor crimes," described in the legislation as instances where women are killed or maimed in the name of family honor. The resolution calls on the U.S. government to work with foreign law enforcement and judicial agencies to enact reforms to address more effectively the investigation and prosecution of such crimes, and to make resources

available to provide refuge and rehabilitation for victims and their children. Specifically, the resolution calls for the U.S. Department of State to include in its yearly Country Reports on Human Rights Practices incidences of honor killings and related violence in foreign countries, the steps taken by foreign governments to address the problem, and all relevant actions taken by the United States to reduce the incidence of such violence and increase investigation and prosecution of such crimes. The resolution also calls for the president and secretary of state to communicate U.S. concerns over these human rights violations directly to leaders in countries where honor killings, dowry deaths, and related practices occur, and to urge these leaders to investigate and prosecute such acts as murder.

Russian Democracy Act of 2002, H.R. 2121 (P.L. 107-246)

Major Sponsor: Rep. Tom Lantos (D-CA)
Status: Passed into law on October 23, 2002.

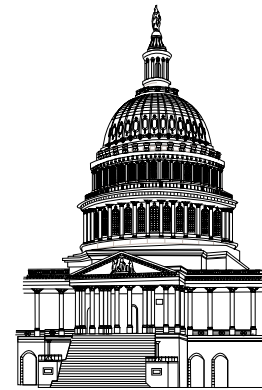
This Act appropriates necessary funding to facilitate Russia's integration into the Western community of nations, including the establishment of a stable democracy and a market economy within the framework of the rule of law and respect for individual rights. The Act also seeks to engage the government of the Russian Federation and Russian society in strengthening democratic reform and institutions, and in promoting the principles of transparency and good governance. These principles encompass fair and honest business practices, accessible and open legal systems, freedom of religion, and respect for human rights. Additionally, the Act encourages the Russian government to address cross-border issues, including non-proliferation of weapons of mass destruction, environmental degradation, crime, trafficking, and corruption in a cooperative and transparent manner consistent with internationally recognized principles.

The Day Laborer Fairness and Protection Act, H.R. 2755

Major Sponsor: Rep. Luis Gutierrez (D-IL)

Status: Referred to the House Subcommittee on Workforce Protections on March 11, 2002.

This Act provides employment protections to day laborers by regulating day



labor service agencies. The Act requires that such agencies provide notice of the expected wages to be paid by each third-party employer using their services. Wages for day laborers, who are often employed to perform manual labor such as construction work on a daily or short-term basis, must equal those paid to permanent employees who perform substantially equivalent work. Additionally, the Act establishes requirements for day laborer services agencies and employers including: civil damages and criminal penalties for certain employer violations of the Act; itemized wage statements, annual earnings summaries, and optional payment schedules; protection mechanisms for day laborers alleging violations of the Act; adequate seating, restrooms, and water in waiting areas; health care liability for injuries on the job or in transit; equitable expenses for day laborer meals, transportation, and equipment; and agency registration with the secretary of labor.

The Homeland Security Act of 2002, H.R. 5005 (P.L. 107-296)

Major Sponsor: Rep. Richard K. Arney (R-TX)

Status: Passed into law on November 25, 2002.

This comprehensive Act establishes a U.S. Department of Homeland Security (DHS) to prevent terrorist attacks within the United States and to minimize the potential damage and assist in the recovery effort stemming from possible future attacks. The Act also abolishes the Immigration and Naturalization Service (INS) and transfers INS functions, including the Border Patrol, detention and removal, intelligence, investigations, and inspections programs to

continued on page 38

Land Rights, continued from page 5

U.S. domestic courts, the Commission challenged the U.S. government's claim against its jurisdiction by noting that the main issue the Danns' case raises—the 1962 ICC “award”—occurred subsequent to the United States' ratification of the OAS Charter in 1951, which therefore provides the Commission with jurisdiction over the matter.

Enforcing the Rights of American Indians in the Inter-American System

The American Convention establishes both the procedures and substantive rights that govern the adjudication of complaints by the Inter-American Commission and the Inter-American Court of Human Rights (Court) with respect to state parties. However, the principal instrument that sets forth the applicable substantive rights of countries not party to the American Convention is the American Declaration. As such, the Inter-American Commission considers the American Declaration to articulate OAS member states' general human rights obligations under the OAS Charter, a multilateral treaty with the force of law.

As an OAS member state, the United States is legally bound to uphold the organization's human rights principles and obligated to comply with the Commission's recommendations. The primary obstacle to enforcing the rights of American Indians in the inter-American system, however, is that the United States has not accepted the jurisdiction of the Court. Although the Commission has reviewed the United States' treatment of American Indians, the U.S. government does not consider itself obligated to respond to the Commission's findings. The ultimate challenge facing the Danns and other American Indians is utilizing the Commission's preliminary merits report to persuade the United States to change its actions.

Regardless of the U.S. government's response to the Commission's findings, or its failure to accept the Court's jurisdiction, it may be argued that the organs of the inter-American system are porous. The Commission's actions thus far in the Dann case, and any future action by the Commission or the Court on such issues, will in fact affect the United States indi-

rectly. Although the decisions may not be binding on the United States, the Commission's decision in the instant case will contribute to the inter-American system's perspective and approach to informing the rights of Indigenous Peoples in the Americas. The Commission draws from the decisions of the Court in preparing its reports and recommendations, and the United States may gradually be forced to respond to the Commission's findings. To whatever degree the Commission is influenced by the Court, the Court's decisions touch even those countries that have yet to accept its jurisdiction.

The Commission's recognition of violations of the Dann sisters' rights may prove substantial to the developing jurisprudence on Indigenous Peoples' rights in the Americas. Further, the Danns' act of bringing their claims before the Commission, and thereby bringing the United States within the ambit of its jurisdiction, is significant. Being a player in the international community entails accepting certain obligations to respond to developments within the systems to which a state is party, and also to honor the responsibilities a member state accepts by committing itself to respecting a set of rights enumerated in particular international instruments. It is important that the United States begin to acknowledge the development of the inter-American system's jurisprudence concerning the rights of indigenous populations and its domestic application. ☸

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Legislative Watch, continued from page 36

DHS. The Office of Refugee Resettlement of the Department of Health and Human Services is designated to care for unaccompanied immigrant children. Additionally, the Act requires the secretary of DHS to appoint an officer for civil rights and civil liberties to assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by DHS employees and officials. The Act explicitly prohibits implementation of Operation TIPS (Terrorism Information and Prevention System), a proposed program that would have recruited letter carriers, utility workers, and others with access to private residences to report suspicious activity to law enforcement. Finally, the Act expresses the sense of Congress reaffirming the continued importance of the Posse Comitatus Act, which prohibits the use of the Armed Forces for civilian law enforcement except as authorized by the U.S. Constitution or Congress. ☸

Legislative Focus, continued from page 37

costly. Both of these arguments are questionable, as the IPA does not tamper with state death penalty laws and focuses on providing resources for states to use toward their criminal justice system. Further, as Senator Leahy has responded, “The costs of providing DNA testing and competent counsel are relatively small, especially when you compare them to the costs of retrials that are necessitated by the lack of adequate counsel at trial, or the cost of locking up innocent people for years or even decades.” The IPA would begin to address some of the flaws in the U.S. capital punishment system. Moreover, it is particularly difficult to harmonize a nation's role as a defender of international human rights with its failure to employ means available to it in an effort to exonerate an innocent person whose life it will otherwise end. ☸

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